

## § 411.33

## 42 CFR Ch. IV (10–1–11 Edition)

would have been paid if a proper claim had been filed.

### § 411.33 Amount of Medicare secondary payment.

(a) *Services for which CMS pays on a Medicare fee schedule or reasonable charge basis.* The Medicare secondary payment is the lowest of the following:

(1) The actual charge by the supplier (or the amount the supplier is obligated to accept as payment in full if that is less than the charges) minus the amount paid by the primary payer.

(2) The amount that Medicare would pay if the services were not covered by a primary payer.

(3) The higher of the Medicare fee schedule, Medicare reasonable charge, or other amount which would be payable under Medicare (without regard to any applicable Medicare deductible or coinsurance amounts) or the primary payer's allowable charge (without regard to any deductible or co-insurance imposed by the policy or plan) minus the amount actually paid by the primary payer.

(b) *Example:* An individual received treatment from a physician for which the physician charged \$175. The primary payer allowed \$150 of the charge and paid 80 percent of this amount or \$120. The Medicare fee schedule for this treatment is \$125. The individual's Part B deductible had been met. As secondary payer, Medicare pays the lowest of the following amounts:

(1) Excess of actual charge minus the primary payment:  $\$175 - \$120 = \$55$ .

(2) Amount Medicare would pay if the services were not covered by a primary payer:  $.80 \times \$125 = \$100$ .

(3) Primary payer's allowable charge without regard to its coinsurance (since that amount is higher than the Medicare fee schedule in this case) minus amount paid by the primary payer:  $\$150 - \$120 = \$30$ .

The Medicare payment is \$30.

(c)–(d) [Reserved]

(e) *Services reimbursed on a basis other than fee schedule, reasonable charge, or monthly capitation rate.* The Medicare secondary payment is the lowest of the following:

(1) The gross amount payable by Medicare (that is, the amount payable without considering the effect of the

Medicare deductible and coinsurance or the payment by the primary payer), minus the applicable Medicare deductible and coinsurance amounts.

(2) The gross amount payable by Medicare, minus the amount paid by the primary payer.

(3) The provider's charges (or the amount the provider is obligated to accept as payment in full, if that is less than the charges), minus the amount payable by the primary payer.

(4) The provider's charges (or the amount the provider is obligated to accept as payment in full if that is less than the charges), minus the applicable Medicare deductible and coinsurance amounts.

(f) *Examples:* (1) A hospital furnished 7 days of inpatient hospital care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services totaled \$2,800. The primary payer paid \$2,360. No part of the Medicare inpatient hospital deductible of \$520 had been met. If the gross amount payable by Medicare in this case is \$2,700, then as secondary payer, Medicare pays the lowest of the following amounts:

(i) The gross amount payable by Medicare minus the Medicare inpatient hospital deductible:  $\$2,700 - \$520 = \$2,180$ .

(ii) The gross amount payable by Medicare minus the primary payment:  $\$2,700 - \$2,360 = \$340$ .

(iii) The provider's charges minus the primary payment:  $\$2,800 - \$2,360 = \$440$ .

(iv) The provider's charges minus the Medicare deductible:  $\$2,800 - \$520 = \$2,280$ . Medicare's secondary payment is \$340 and the combined payment made by the primary payer and Medicare on behalf of the beneficiary is \$2,700. The \$520 deductible was satisfied by the primary payment so that the beneficiary incurred no out-of-pocket expenses.

(2) A hospital furnished 1 day of inpatient hospital care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services totalled \$750. The primary payer paid \$450. No part of the Medicare inpatient hospital deductible had been met previously. The primary payment is credited toward that deductible. If the gross amount payable by Medicare in this case is \$850, then as secondary

payer, Medicare pays the lowest of the following amounts:

(i) The gross amount payable by Medicare minus the Medicare deductible:  $\$850 - \$520 = \$330$ .

(ii) The gross amount payable by Medicare minus the primary payment:  $\$850 - \$450 = \$400$ .

(iii) The provider's charges minus the primary payment:  $\$750 - \$450 = \$300$ .

(iv) The provider's charges minus the Medicare deductible:  $\$750 - \$520 = \$230$ . Medicare's secondary payment is \$230, and the combined payment made by the primary payer and Medicare on behalf of the beneficiary is \$680. The hospital may bill the beneficiary \$70 (the \$520 deductible minus the \$450 primary payment). This fully discharges the beneficiary's deductible obligation.

(3) An ESRD beneficiary received 8 dialysis treatments for which a facility charged \$160 per treatment for a total of \$1,280. No part of the beneficiary's \$75 Part B deductible had been met. The primary payer paid \$1,024 for Medicare-covered services. The composite rate per dialysis treatment at this facility is \$131 or \$1,048 for 8 treatments. As secondary payer, Medicare pays the lowest of the following:

(i) The gross amount payable by Medicare minus the applicable Medicare deductible and coinsurance:  $\$1,048 - \$75 - \$194.60 = \$778.40$ . (The coinsurance is calculated as follows:  $\$1,048 \text{ composite rate} - \$75 \text{ deductible} = \$973 \times .20 = \$194.60$ ).

(ii) The gross amount payable by Medicare minus the primary payment:  $\$1,048 - \$1,024 = \$24$ .

(iii) The provider's charges minus the primary payment:  $\$1,280 - \$1,024 = \$256$ .

(iv) The provider's charge minus the Medicare deductible and coinsurance:  $\$1,280 - \$75 - \$194.60 = \$1,010.40$ . Medicare pays \$24. The beneficiary's Medicare deductible and coinsurance were met by the primary payment.

(4) A hospital furnished 5 days of inpatient care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services were \$4,000 and the gross amount payable was \$3,500. The provider agreed to accept \$3,000 from the primary payer as payment in full. The primary payer paid \$2,900 due to a deductible requirement under the primary plan. Medicare con-

siders the amount the provider is obligated to accept as full payment (\$3,000) to be the provider charges. The Medicare secondary payment is the lowest of the following:

(i) The gross amount payable by Medicare minus the Medicare inpatient deductible:  $\$3,500 - \$520 = \$2,980$ .

(ii) The gross amount payable by Medicare minus the primary payment:  $\$3,500 - \$2,900 = \$600$ .

(iii) The provider's charge minus the primary payment:  $\$3,000 - \$2,900 = \$100$ .

(iv) The provider's charges minus the Medicare inpatient deductible:  $\$3,000 - \$520 = \$2,480$ . The Medicare secondary payment is \$100. When Medicare is the secondary payer, the combined payment made by the primary payer and Medicare on behalf of the beneficiary is \$3,000. The beneficiary has no liability for Medicare-covered services since the primary payment satisfied the \$520 deductible.

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**§ 411.35 Limitations on charges to a beneficiary or other party when a workers' compensation plan, a no-fault insurer, or an employer group health plan is primary payer.**

(a) *Definition.* As used in this section *Medicare-covered services* means services for which Medicare benefits are payable or would be payable except for the Medicare deductible and coinsurance provisions and the amounts payable by the primary payer.

(b) *Applicability.* This section applies when a workers' compensation plan, a no-fault insurer or an employer group health plan is primary to Medicare.

(c) *Basic rule.* Except as provided in paragraph (d) of this section, the amounts the provider or supplier may collect or seek to collect, for the Medicare-covered services from the beneficiary or any entity other than the workers' compensation plan, the no-fault insurer, or the employer plan and Medicare, are limited to the following:

(1) The amount paid or payable by the primary payer to the beneficiary. If this amount exceeds the amount payable by Medicare (without regard to deductible or coinsurance), the provider or supplier may retain the primary